

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DAVID CIPRIAN HERRERA,

Plaintiff,

v.

COMMERCE BANK, N.A., TD BANK, N.A.,

Defendants.

Civil Action No.

NOTICE OF REMOVAL

**TO: UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PLEASE TAKE NOTICE that Defendants, Commerce Bank, N.A.¹ (“Commerce”), and TD Bank, N.A. (“TD Bank”), hereby remove the above-captioned action from the Supreme Court of the State of New York, County of Bronx, to the United States District Court for the Southern District of New York, pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1441, *et seq.*, and in connection therewith, alleges as follows:

1. An action has been commenced and is now pending in the Supreme Court of the State of New York, County of Bronx, entitled *David Ciprian Herrera v. Commerce Bank, N.A. and TD Bank, N.A.*, bearing Index No. 28938/2018E (hereinafter the “Complaint”). A copy of the Summons and Complaint filed in the State Court action is attached and incorporated by reference as **Exhibit 1**.

2. TD Bank and Commerce were served with the Complaint on August 8, 2018. Copies of the Affidavits of Service are attached hereto collectively and incorporated by reference as **Exhibit 2**. This Notice of Removal is timely in accordance with the requirements of U.S.C. §

¹ Commerce Bank, N.A. is TD Bank, N.A.’s predecessor and is a defunct corporation. Commerce Bank, N.A. is improperly named in this lawsuit as it was a defunct corporation at the time of the accident.

1446(b), as it has been filed within thirty (30) days after service of the State Court Summons and Complaint. No further proceedings have occurred in this action.

JURISDICTION

3. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1). Accordingly, this action is one that may be removed to this Court by Defendants pursuant to 28 U.S.C. § 1441 in that this is a civil action wherein the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and the action is between citizens of different states.

4. Plaintiff, David Ciprian Herrera, is now and was at the time of removal a resident of the County of Bronx, State of New York.

5. Defendant, Commerce, is now and was at the time of removal TD Bank's predecessor and a defunct foreign corporation that was previously domiciled in New Jersey with its principle place of business in New Jersey.

6. Defendant, TD Bank, is now and was at the time of removal a foreign corporation domiciled in Delaware, with its principle place of business in New Jersey.

FACTUAL BACKGROUND

7. In the Complaint Plaintiff Herrera alleges that he was injured from a trip and/or slip and fall on July 11, 2018 which occurred at the premises located at 640 East Fordham Road, Bronx, New York. (*See Exhibit 1*). Plaintiff further alleges that Commerce and/or TD Bank owned, managed, controlled, and maintained the aforementioned premises. (*Id.*, at ¶¶ 8-22).

8. Herrera further alleges that as a result of the trip and/or slip and fall, he sustained serious injuries in the form of pain, shock and mental anguish, and that he has been caused to incur and will continue to incur expenses for medical care and attention, and has been rendered

unable to perform his normal activities and duties. (*Id.*, at ¶ 27). Herrera further claims that he has been damaged in a sum which exceeds the jurisdictional limits of all lower courts. (*Id.*, at ¶ 28). Upon information and belief, Herrera is alleging that he sustained a fractured ankle requiring surgery as a result of this trip and/or slip and fall.

9. Accordingly, the amount in controversy herein exceeds \$75,000.00, exclusive of interest and costs provided by 28 U.S.C § 1332. Complete diversity exists between Herrera, TD Bank and Commerce. This case is therefore within the original jurisdiction of this Court pursuant to 28 U.S.C. § 1332(a)(1) and is removable pursuant to 28 U.S.C. § 1441(a).

10. Pursuant to the provisions of 28 U.S.C. § 1446(a), Defendants have attached herewith and incorporate by reference a copy of the Summons and Complaint filed in the Supreme Court of the State of New York, County of Bronx. (*See Exhibit 1*).

11. Defendants will provide immediate notice of the filing of this Notice of Removal to Herrera as required by 28 U.S.C § 1446(d).

12. A true and complete copy of this Notice of Removal will be filed with the Clerk of the Supreme Court of the State of New York, County of Bronx, as required by law.

WHEREFORE, Defendants respectfully request that the action presently pending in the Supreme Court of the State of New York, County of Bronx be removed to the United States District Court for the Southern District of New York.

Date: August 28, 2018

Respectfully submitted,

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